

Artificial Intelligence as an Object of Constitutional Relations

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ABSTRACT

On the basis of general theoretical data, the concept of "artificial intelligence" is developed in the science of constitutional law. The main attention is paid to constitutional and legal norms governing the use of artificial intelligence in Russia, and ensuring fundamental human rights and freedoms. The analysis of international legal documents, the Constitution of the Russian Federation, state program and strategic documents of the Russian Federation related to the development of the digital economy and artificial intelligence, showed a gap in the legal regulation of public relations in the field under study.

A comprehensive study of theoretical issues and constitutional legal norms led to the conclusion that it is possible to consider artificial intelligence in constitutional law as an object of social relations.

Keywords: *constitutional human rights and freedoms, object of constitutional legal relations, artificial intelligence, digital economy*

1. INTRODUCTION

The evolutionary development of man and society leads to the emergence of new social relations that require the establishment of general and clear rules of behavior in order to streamline the actions of the subjects involved in them. This is achieved through legal norms. However, the reality is often ahead of legal regulation, which fully applies to social relations, the structural element of which is artificial intelligence. In jurisprudence, it is most often considered from the standpoint of administrative, informational and civil regulation of the creation and operation of robots, leaving aside the constitutionality of such provisions. However, the Constitution of the Russian Federation, adopted at a referendum by the Russian people, has supremacy throughout the country and supreme legal force in relation to other regulatory legal acts. This requires consideration of new social relations with a view to their further legal regulation by the norms of the Constitution of Russia.

1.1. Main text

1.1.1. A general theoretical approach to the definition of "artificial intelligence"

In history, there are three stages in the development of the theory of artificial intelligence. The first is connected with

the name of John McCarthy, who in 1959 first introduced this concept into scientific circulation [1]. The second is the 80s of the last century, when the idea of expert systems arose. Currently, this direction has been developed in the commercial version of enterprises in making managerial decisions. Information programs that use the technologies of Business Intelligence (business intelligence - BI), Knowledge Management (KM) are the most popular [2]. SWOT analysis allows companies to identify their strengths and weaknesses, as well as opportunities for further development and environmental threats [3].

Academician G.S. Pospelov is considered to be the founder of the Russian school of artificial intelligence, under the scientific supervision of which the GRANIT-M automated system for the integrated development of defense industries was developed [4].

The third stage in the development of scientific research in the field of artificial intelligence is associated with significant opportunities that characterize the beginning of the 21st century and the present. Modern knowledge has an interdisciplinary approach. They are contained not only in computer science and cybernetics, but also in biology, sociology, psychology and other sciences. However, a single well-established definition of the category of "artificial intelligence" has not yet been developed not only in jurisprudence but in other branches of scientific knowledge. However, many researchers are concerned about the social and psychological risks associated with this process [5].

The semantic meaning of the category "intelligence" means mental ability, the mental principle in a person, which determines his activity. And "artificial" is "not natural, made like genuine" [6]. Therefore, "artificial

intelligence" shall be considered as a kind of mental abilities of a person. Some researchers associate artificial intelligence with artificial reality [7].

It should be noted that in psychology dealing with the study of human intelligence, there are still debates about its content. The most successful definition, in our opinion, is understanding as a stable structure of the individual's mental abilities, the level of his cognitive abilities, the mechanism of the individual's mental adaptation to life situations, understanding the essential possibilities of reality, the inclusion of the individual in the sociocultural experience of society [8]. It can be seen from this that the structure of the intellect should include: a knowledge system and algorithms for solving problems, the ability to learn and acquire new knowledge, an adequate response to environmental changes, the ability to abstract thinking and forecasting, interaction with other personalities, understanding and creating cultural values society.

In psychology, seven types of intelligence are distinguished: linguistic (the ability to use natural language to transmit information, as well as to stimulate), musical (the ability to play and compose music), logical and mathematical (the ability to explore, classify categories and objects, manipulate symbols and find between them communication), spatial (to perceive and create visual-spatial compositions), bodily-kinesthetic (the ability to use motor skills in sports and manual labor), between personal (the ability to understand other people and communicate with them) and intrapersonal (to understand their feelings and desires) [9]. Emotional and spiritual flow from the above. It seems that each person is individual and unique, and cannot possess all types of intelligence equally. In addition, intrapersonal and spiritual suggest that their carrier can only be a person. Artificial intelligence shall be distinguished on the same grounds. If a person possesses all of them to vary degrees, then artificial intelligence can be one of its types or combine several of them. In our opinion, the combination of all types of intelligence in one system is superintelligence, which is premature to talk about, because in this case it can exist autonomously from a person, find ways of self-reproduction, have will and interests.

The priority remains the interaction of man and machine. Professor T.V. Chernigovskaya rightly notes in this regard that "... we have not yet seen artificial intelligence that would be Mozart or Shakespeare" [10]. This is also confirmed by other researchers who believe that the translation from English of the phrase Artificial Intelligence turned out to be inaccurate. It should be understood as "the ability to think reasonably" [11]. However, artificial intelligence cannot be considered as a simple set of algorithms. Its main difference from the latest generation technical means is the ability to self-learn on the basis of accumulated experience, adaptation to environmental changes, and the presence of cognitive functions [12].

Therefore, at present, it is necessary to understand it as a reasonably thinking system, capable of building logical

chains and choosing the best option for behavior with human cognitive abilities.

Based on the foregoing, we can distinguish the following main types of artificial intelligence:

1. Specialized - implemented in specific areas (medicine, personnel management, industry, etc.). It is a type of natural intelligence;
2. Combined - consists of several types of natural;
3. General - equal to human intelligence (some of the species may prevail, others appear to a lesser extent);
4. Superintelligence - involves not only the totality of all types of human intelligence, but their qualitative superiority over natural intelligence.

1.1.2. International legal acts as sources of constitutional law in the field of artificial intelligence

The Constitution of the Russian Federation contains general principles for the construction of the state and society, which are the foundation of all legal relations in the state. It establishes legal relations of a general nature in which the subjects, their rights and obligations are not precisely defined [13]. In the process of implementing constitutional norms, legal relations arise regarding specific facts, events, disputes, claims, which can be regulated by the norms of other branches of law. Therefore, the norms contained in the Constitution are applicable to legal relations related to artificial intelligence. G.K. Gadzhiev rightly notes that there can be no gaps in the Constitution and if the Constitution is well "worked out", it is a storehouse of "implicit" knowledge [14].

Part 4 of article 15 of the Constitution of Russia, which stipulates that the generally recognized principles and norms of international law and international treaties are part of its legal system can be considered as one of these "storerooms". In cases of conflict between international law and national law, the rules of the international treaty take precedence over Russian laws, but not over the national Constitution. The generally recognized principles and norms of international law "compensate for the normative "vacuum" or normative "insufficiency" [15].

With regard to artificial intelligence, it should be noted that there are no international treaties in this direction. Only documents having a recommendatory character at the regional level have been developed.

At the universal level, within the UN, this issue is subject to discussion in connection with the guarantee of human rights and freedoms contained in the 1948 Universal Declaration of Human Rights and the 1966 Covenants on Civil and Political, Social, Economic, and Cultural Human

Rights. So, on September 12, 2014, at the 27th session of the UN, the Human Rights Council addressed the issue of privacy in the digital age. The opening remarks by the United Nations Deputy High Commissioner for Human Rights noted that digital communications technologies have revolutionized the way people interact, and for millions of them, the digital age has become a century of liberation. However, practicing state or extraterritorial surveillance, the interception of digital messages, the collection of personal data that violate the right to privacy, political persecution and dissent is of concern. The report emphasizes the responsibility of states to provide legislative protection of the privacy rights of individuals against unlawful or arbitrary interference. "The control of communications in any form should be based on generally accessible legislation, which in turn should be consistent with the constitutional regime of a given state and international human rights law" [16].

UN Secretary General Antonio Guterres at the opening of the UNESCO General Conference held in Paris on November 12, 2019, noted the need to create a universal regulatory framework regarding the ethical aspects of the use of artificial intelligence [17]. However, this issue is still under discussion.

In March 2019, the Committee of Ministers of the Council of Europe developed a Recommendation "On the Prevention and Combating of Sexism". A special place in it is given to artificial intelligence, whose algorithms can transmit and strengthen gender stereotypes, contributing to the spread of sexism [18].

Further the rest in matters of discussion of artificial intelligence, the European Union advanced. A resolution of the European Parliament on February 16, 2017, made recommendations to the European Commission regarding civil law on robotics. In particular, it outlines the positive aspects of introducing artificial intelligence into society, which include: increasing efficiency and reducing costs in production and trade, transport, in the areas of healthcare, rescue operations, agriculture, and education. These include the problem of an aging population and the need for the use of artificial intelligence in the labor market.

The Resolution stipulates that the EU Commission should develop common and universal concepts of "cyber-physical systems", "autonomous systems", "smart autonomous robots", taking into account the following characteristics of a smart robot: the ability to become autonomous using sensors and exchanging data with its environment; exchange these data and analyze them; self-study based on experience gained and in interaction; the presence of at least minimal physical support; the ability to adapt the actions and behavior in accordance with environmental conditions; lack of life from a biological point of view.

The resolution emphasizes that the creation of robots should have a goal - to complement human capabilities, and not replace it. It also contains the principles of development and implementation in everyday life: autonomous vehicles; robots: care, restoration, and

improvement of the human body, in the fields of education and medical labor.

The Resolution contains ethical principles related to the assessment of a person's security in terms of his health, freedom, confidentiality, integrity, and respect for human dignity, self-determination, non-discrimination and protection of personal data. The provision including the rule of accessibility and transparency for a person made by artificial intelligence decisions is worthy of attention. Guiding principles in this area should be - "do good" and "do no harm". Therefore, theses that recommend the basic principles of responsibility on which the state legislation in the field of artificial intelligence should be based are of interest: the predictability and orientation should be at the heart of the interaction of people and the robot; legal acts should not limit the types and extent of damage that can be compensated, as well as limit the forms of compensation that can be received by the injured party on the basis that the damage was not caused by a person; introduction of an insurance system following the example of insurance of an increased source of danger.

The document contains a proposal to create an EU Agency for Robotics and Artificial Intelligence with the aim of creating a single registry of artificial intelligence products for their further identification [19]. The Recommendation emphasizes that it is based on Laws of A. Azimov, which are most often used in science fiction and aimed at ensuring human safety: a robot cannot harm a person or, through inaction, allow a person to be harmed; the robot must obey all orders given by a person, except in cases where these orders are contrary to the First Law; the robot must take care of its safety to the extent that it does not contradict the First or Second Laws [20].

The European Parliament also took care of ethical issues, having drawn up a Code of Ethics for robotics developers, inviting them to voluntarily comply with it. The document contains the basic principles - "do good", "do no harm", independence (principle of voluntary informed consent of a person to interact with the robot), justice (all benefits received from the activities of robots should be distributed fairly) [21].

Within the CIS, there are no acts affecting one way or another artificial intelligence. Conventionally, these include the Report of the Interstate Council on Antimonopoly Policy of the CIS Executive Committee "Formation of Competitive Policy in the CIS Member States in the Development of the Digital Economy" and its protocol decision [22]. The Report describes the development of the digital economy of the CIS countries, as well as analyzes the readiness of their legislation for new global challenges. According to the Report, the main purpose of the digital economy is to accelerate the exchange of information between companies, banks, government agencies, the public, bypassing intermediaries and complex schemes. The analysis of the CIS countries legislation presented in the Report suggests that the main product of the digital economy is information and its exchange.

Within the framework of the CIS, a model law "On Cross-Border Education" [23] was adopted, which provides for the training of citizens at the universities of the participating countries at the location in their country using special technologies (e-learning).

Thus, the concept of "artificial intelligence" is discussed in more detail at the regional level within the European Union, to which Russia is not a member. Consequently, the recommendations given by its bodies are not binding on Russia. However, the principles of regulation of the production and use of artificial intelligence that it develops can later become key in international law, and as a result, in the legislation of most European and other states. The main thing that can be learned from modern ideas embodied in EU documents - the priority area of legal regulation is the interaction of man and machine, which ensures a better quality of human life. All universal and regional acts put human rights and freedoms to the fore. Types of artificial intelligence can be classified by industry in which it is used. If you adhere to the author's typology, these are specialized and combined intelligences. And its products are information, services, or artificial intelligence itself, its body (in cases of restoration of the human body).

1.1.3. Artificial intelligence in constitutional relations

The basic principle contained in the Basic Law of the Russian Federation, as in international law, is the recognition, observance, and protection by the state of human rights and freedoms (Art. 2). This is the fundamental beginning of all legal relations, including those whose object is artificial intelligence.

Currently, in Russia there is no legislative framework that purposefully regulates the implementation of human rights using artificial intelligence. In view of this situation, the legal relations arising are regulated by legal norms by analogy. However, the rapid development of new technologies requires the development and adoption of a separate law, where the subject of regulation will be artificial intelligence and/or mechanisms with artificial intelligence, including in order to protect human rights and freedoms. The issue of ensuring privacy and the right to dignity of an individual is especially acute in these conditions [24].

The promising trajectory of legislative development in the field of regulating relations using artificial intelligence was determined by the President of the Russian Federation as a guarantor of human and civil rights and freedoms. By presidential decree of May 7, 2018 [25], the main development priorities of the Russian state and society were identified, including the digital economy. Despite the fact that the Decree does not contain the concept of "artificial intelligence", an analysis of the tasks set for the Government of the Russian Federation in this area allows us to conclude that we are talking about, among other things, specialized and combined artificial intelligence, its

development, and implementation in all spheres of life, especially in the economic. In this case, the object of constitutional law relations will be digital technologies and platforms. In pursuance of the Decree of the President of the Russian Federation, the Government of the Russian Federation developed the Digital Economy of the Russian Federation Program [26], which was canceled in 2019 in connection with the approval by the President of the Russian Federation of the "Strategy for the Development of Artificial Intelligence in Russia until 2030" [27]. It was in this Program where the concepts of "artificial intelligence" and "neurotechnology" were first used as cross-cutting digital technologies.

The new Strategy for the first time in Russian law gives the concept of "artificial intelligence" as a "complex of technological solutions that allows simulating human cognitive functions (including self-learning and finding solutions without a predetermined algorithm) and to obtain results that are comparable, at least, when performing specific tasks, with the results of human intellectual activity." Its technologies are: computer vision, natural language processing, speech recognition and synthesis, intellectual decision support.

Thus, an analysis of the provisions of the Strategy, which contains the concept of artificial intelligence, shows that at present, artificial intelligence is understood quite narrowly and is mainly associated with computer technology. This is justified since such types of intelligence as general and superintelligence have not yet been created by man. Provided they arise, there will be a need to review all Russian legislation since in this case, artificial intelligence will transfer from an object to a subject of constitutional-legal relations. As some researchers note, the Strategy emphasizes the cognitive component of artificial intelligence [28]. The main directions of the use of artificial intelligence technologies are identified - the economy and the social sphere.

The Strategy pays special attention to the principles of the development and use of artificial intelligence in Russia, which include: protection of human rights and freedoms; safety of citizens and legal entities; transparency; technological sovereignty of the country; the integrity of the innovation cycle; reasonable frugality; support for the competition. All these principles follow from the principles of the Russian constitutional system contained in the first chapter of the Constitution of the Russian Federation, which include the priority of human rights and freedoms; state sovereignty; social state; unity of economic space. In addition, many of them are similar to the principles contained in the Resolution of the European Parliament of February 16, 2017.

In the Strategy, a special place is given to the creation of an integrated system of regulating social relations arising in connection with the development and implementation of artificial intelligence technologies. In our opinion, this system is obliged to rely on constitutional provisions relating, first of all, to human rights and freedoms. Therefore, state programs for the development of artificial intelligence should not be aimed at commercial interests

and business, but at the harmonious construction of a social state where a person is at the center of the legal system. Digital innovations are required to have social demand, be submitted to popular discussions, be scientifically substantiated from a position of justice.

2. CONCLUSION

Since the Constitution of the Russian Federation is the core of the legal system and has the highest legal force, the legal regulation of social relations related to artificial intelligence should be based on those values and principles that it contains. The Constitution was adopted by the Russian people in a referendum, it has a democratic essence and contains priority national interests. Consequently, the people or their representatives shall also determine how to create and use artificial intelligence, taking into account the national interests of the entire Russian people. In this case, artificial intelligence can only be considered as a benefit of the material or intangible world, about which subjects enter into social relations. In other words, artificial intelligence technologies should improve a person's quality of life without infringing on his constitutional rights and freedoms and not replacing him. In modern conditions of the rapid development of new technologies, artificial intelligence becomes the object of legal relations, including constitutional. At the same time, even constitutional futurism does not allow the possible transformation of artificial intelligence into a subject of constitutional-legal relations

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